APPELLANT PRO SE:

MARLAN C. BONDS
Michigan City, Indiana

ATTORNEYS FOR APPELLEES:

MICHAEL F. DEBONI
SARA J. MACLAUGHLIN
Yoder, Ainlay, Ulmer & Buckingham
Goshen, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MARLAN C. BONDS,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 20A04-0607-CV-368
	)	
SHERIFF MICHAEL BOOKS and GREG EASH,	)	
	)	
Appellee-Defendants.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Olga H. Stickel, Judge
Cause No. 20D04-0511-SC-2745

January 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Marlan C. Bonds, pro se,[1] appeals the trial court's entry of summary judgment in favor of Elkhart County Sheriff Michael Books and Captain Greg Eash.

We affirm.

ISSUE

Whether the trial court erred in determining that Bonds failed to comply with the notice requirements of the Indiana Tort Claims Act (the "ITCA").

FACTS

While an inmate at the Elkhart County Jail,[2] Bonds ordered $38.85 worth of items from the commissary on December 16, 2003. The commissary placed the order and held the items for Bonds, pending his release from a segregated unit of the jail.

On January 4, 2004 and February 4, 2004, Bonds submitted inmate request forms[3] to the Elkhart County Sheriff's Department, requesting information regarding his commissary orders. On the form dated January 4, Bonds wrote, in part, "I have not received stated commissary nor has my money been put back on my books. I respectfully request that my money be put pack on my account[.]" (App. 13). The February 4 form reads, in part, "I respectfully request a resident history report starting 10-31-2003 and

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[1] We note that Bonds' brief fails to comply with Indiana Appellate Rule 43(C), which provides that briefs "shall be produced in a neat and legible manner . . . ." Bonds' brief also fails to comply with Appellate Rules 46(A)(5), (6), (7), (8) and (10). Furthermore, Bonds' Appendix does not contain the chronological case summary, as required by Appellate Rule 50(2)(a). "It is well settled that pro se litigants are held to the same standard as are licensed lawyers." *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).

[2] Bonds currently is incarcerated at the Indiana State Prison in Michigan City.

[3] These forms allow inmates to make requests or obtain "specific information." (App. 11, 13).

possiably [sic] a reason for why I did not rec[ei]ve a comm[i]ssary order February 4th . . . . Please include my balance to date 2-5-04[.]" (App. 11). According to notes made in response to Bonds' request, Bonds' order was being held, "waiting for [Bonds] to get out of Ward 1." (App. 14).

On September 29, 2004, Bonds prepared an inmate complaint form,[4] in which he alleged that he spoke with Captain Eash regarding a receipt in the amount of $38.85, dated December 16, 2003. The complaint further alleged that Captain Eash "said that he would try to locate it [sic] also that [Bonds] had 30 days to retrieve it after [he] left the County Jail . . . ." (App. 19). Bonds complained, however, that the "30 days [wa]s up" and sought $38.85. The complaint form listed the "Date of Incident" as "12-16-03." (App. 19).

On November 23, 2005, Bonds filed an action against Sheriff Books and Captain Eash in the Small Claims Division of the Elkhart Superior Court. On January 9, 2006, Bonds filed an "expanded" complaint, alleging fraud, theft and deception in the withdrawal of funds from Bonds' inmate account. Bonds sought "compensation of $38.85 with interest of 7% per day from 16 Dec 2003 to 28 Dec 2005. Or [illegible] compensation to $1,100 sum total." (App. 7).

On April 26, 2006, Sheriff Books and Captain Eash filed a motion for summary judgment, asserting Bonds failed to comply with the notice requirements of the ITCA.

[4] It is unclear whether Bonds actually filed or submitted this form.

On June 12, 2006, the trial court entered its order granting summary judgment in favor of Sheriff Books and Captain Eash. The order stated, in pertinent part, as follows:

> In the instant case, the designated evidence shows that Mr. Bonds completed an inmate request form to the commissary officer regarding his allegedly lost commissary items valued at $38.85 on January 4, 2004. The officer responded by telling Mr. Bonds that the items were in a closet pending Mr. Bonds' release from Ward 1. In addition, Mr. Bonds completed an inmate complaint form over eight months later on September 9, 2004; however, there is no evidence that he ever filed any substantial form of Tort Claims Notice in compliance with the Act as required before proceeding in court. Defendants have met their burden establishing that there are no genuine issues of material fact in this matter. Mr. Bonds has failed to present evidence to demonstrate otherwise. Therefore, summary judgment is appropriate. Accordingly, Mr. Bonds is barred from maintaining this action against Defendants.

(App. 90-91).

DECISION

Bonds asserts that the trial court erred in determining that he failed to comply with the ITCA's notice requirement.[5] When reviewing a grant or denial of summary judgment, our well-settled standard of review is the same as it was for the trial court: whether there is a genuine issue of material fact, and whether the moving party is entitled to judgment as a matter of law. *Landmark Health Care Assocs., L.P. v. Bradbury*, 671 N.E.2d 113, 116 (Ind. 1996). Summary judgment should be granted only if the evidence sanctioned by Indiana Trial Rule 56(C) shows that there is no genuine issue of material

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[5] Initially, we note that Appellate Rule 46(A)(8) provides, in relevant part, that "[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record. *Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), *trans. denied*. Bonds provides no citation to authority or cogent argument. Waiver notwithstanding, we shall address the merits of Bonds' argument.

fact and the moving party deserves judgment as a matter of law. Ind. T.R. 56(C); *Blake v. Calumet Const. Corp.*, 674 N.E.2d 167, 169 (Ind. 1996). "A genuine issue of material fact exists where facts concerning an issue which would dispose of the litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue." *Scott v. Bodor, Inc.*, 571 N.E.2d 313, 318 (Ind. Ct. App. 1991). Once the movant has carried his initial burden of going forward under Trial Rule 56(C), the nonmovant must come forward with sufficient evidence demonstrating the existence of genuine factual issues, which should be resolved at trial. *Otto v. Park Garden Assocs.*, 612 N.E.2d 135, 138 (Ind. Ct. App. 1993), *trans. denied*. If the nonmovant fails to meet his burden, and the law is with the movant, summary judgment should be granted. *Id.*

> On appeal, we are normally bound by the same standard as the trial court and we must consider all matters which were designated at the summary judgment stage in the light most favorable to the non-moving party. However, the question of compliance with the ITCA is a "procedural precedent which the plaintiff must prove and which the trial court must determine prior to trial." Accordingly, a summary judgment based on the plaintiff's failure to comply with the notice provisions of the Act is "subject to review as [a] negative judgment[], which we will reverse only if contrary to law."

Fowler v. Brewer, 773 N.E.2d 858, 861 (Ind. Ct. App. 2002) (quoting *Brunton v. Porter Mem'l Hosp. Ambulance Serv.*, 647 N.E.2d 636, 639 (Ind. Ct. App. 1994) (internal citations omitted), *trans. denied*.

The ITCA governs lawsuits against employees of political subdivisions, and it "requires early notice that a claim exists . . . ." *Fowler*, 773 N.E.2d at 861. Specifically, Indiana Code section 34-13-3-8 provides:

> (a) Except as provided in section 9 of this chapter, a claim against a political subdivision is barred unless notice is filed with:
> (1) The governing body of that political subdivision; and
> (2) The Indiana political subdivision risk management commission created under IC 27-1-29;
> within one hundred eighty (180) days after the loss occurs.
>
> (b) A claim against a political subdivision is not barred for failure to file notice with the Indiana political subdivision risk management commission created under IC 27-1-29-5 if the political subdivision was not a member of the political subdivision risk management fund established under IC 27-1-29-10 at the time the act or omission took place.

Bonds maintains that the two inmate request forms and his inmate complaint constituted notice of his claim. We disagree.

Bonds submitted two inmate request forms within the 180-day period. Thus, we must determine whether those requests substantially complied with the ITCA's notice provisions.

Substantial compliance with the requirements of the notice statute "is sufficient where the purpose of the notice requirement is satisfied." *Fowler*, 773 N.E.2d at 863. The purpose "is to inform a political subdivision with reasonable certainty of the [incident] and surrounding circumstances so that the political subdivision may investigate, determine liability and prepare a defense to the claim." *Daugherty v. Dearborn County*, 827 N.E.2d 34, 36 (Ind. Ct. App. 2005), *trans. denied*.

Thus, "[i]n order to constitute substantial compliance, the notice must not only inform the State or the governing body of the political subdivision of the facts and circumstances of the alleged injury but must also advise of the intent of the injured party to assert a tort claim." *Fowler*, 773 N.E.2d at 863. "[A]ctual knowledge of the

occurrence on the part of the political subdivision or an employee of the political subdivision does not satisfy the notice requirement of the ITCA." *Id.* at 865.

In this case, the request forms did not place the governing body of the Elkhart County Jail on notice that Bonds intended to present a tort claim against its employees. Thus, the forms did not substantially comply with the notice requirement.

Bonds also filled out an inmate complaint form.[6] Bonds, however, did not prepare and therefore could not have filed, the complaint form until September 29, 2004—289 days after the $38.85 was withdrawn from Bonds' account.

"[T]he requirement that the notice be given within the 180-day period is strictly construed." *Daugherty*, 827 N.E.2d at 36. Thus, even if the complaint were "sufficiently definite as to time, place, nature, etc. of the injury," the fact that it failed to give such notice within 180 days of the occurrence bars Bonds' claim as a matter of law. *Id.* Accordingly, we find the trial court properly granted summary judgment in favor of Sheriff Books and Captain Eash.

Affirmed.

BAKER, J., and ROBB, J., concur.

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[6] For argument's sake, we assume that Bonds filed the complaint form with the proper authorities.